

Application No.: 10/776,576
Final Office Action dated October 15, 2008
Amendment and Response dated February 17, 2009
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Remarks/Arguments:

Introduction

Claims 1, 5-11, and 14-20 are pending. Claim 1 has been amended to further describe the fibrils of the inventive ePTFE. Support for the amendments may be found in paragraph 0017 and previously presented claims 3. Claim 2 has been amended for antecedent basis. Claims 3 and 4 have been canceled. Claims 5-11, 16, 18 and 20 have been amended for antecedent basis. No new matter is introduced with these amendments. Entry of the amendments is respectfully requested.

Section 112 Rejections

Claims 4 and 6-12 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description, and second paragraph, as allegedly being indefinite. Applicants respectfully submit that with the claim amendments presented herewith the Section 112 concern are obviated.

Reconsideration and withdrawal of the Section 112 rejections are respectfully requested.

Double Patenting Rejections

Claims 1, 14 and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claim 2 of copending Application No. 11/206,657. Upon indication of allowable subject matter Applicants are willing, if appropriate, to file a terminal disclaimer.

Section 102 Rejections

Claims 1, 5-11, and 14-20 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,877,661 to House et al. (hereinafter "House"). Applicants respectfully traverse.

House discloses that prior art uniaxially expanded ePTFE structures have parallel and straight fibrils. (House, column 3, lines 10-12). The examiner then asserts that the possible biaxial stretching, as taught by House, is some how reads on the required "radially expanding and longitudinal foreshortening" step of the present invention. While the Applicant agrees with the examiner that biaxial stretching of tubular ePTFE does involve radial expansion. Such biaxial stretching, however, by the very nature of the term would also necessarily have longitudinal stretching. Such longitudinal stretching is in direct contrast to the present invention.

For alleged support of "radially expanding and longitudinal foreshortening", the examiner very selectively and incorrectly reads House. For example, House specifically states that is longitudinally stretched ePTFE tubes are specifically compressed in an opposite longitudinal direction, as follows:

FIG. 1 is a schematic plan view of a section of a uniaxially expanded PTFE material produced using the techniques disclosed in the U.S. Pat No. 3,953,566 patent. This section as seen under a microscope is depicted as possessing many nodes 2 interconnected by many fibrils 4. This shows the microstructure in which the longitudinal axes of the fibrils are all substantially parallel to the direction of expansion. This precursor material is compressed in the direction parallel to but opposite to the direction in which it was originally expanded by stretching. (House, column 3, lines 16-27)

Clearly, the support of the "radially expanding and longitudinal foreshortening" limitation is not disclosed thereat in House.

The examiner points to the compression step of House for alleged teaching of longitudinal foreshortening. House does disclose longitudinally compressing its ePTFE tube, as follows:

All tubes had a 10 mm inside diameter. ... In accordance with the invention, tubes were fitted over stainless steel mandrels of 10 mm outside diameter. One end of each tube was secured to its mandrel with a restraining wire. The free end of each tube sample was pushed by hand longitudinally toward the restrained end of the tube, thus compressing the tube sample longitudinally. (House, column 6, lines 41-53)

In this step of House, however, there is clearly no radial expansions as the ePTFE tube is placed over the mandrel as the diameters of the ePTFE tube and the mandrel are identical.. Nevertheless, the examiner asserts that such foreshortening would necessarily cause radial expansion. This is in direct contrast to the specific disclosure and teaching of House. House restrains one end of the ePTFE tube and then pushes the free end of the ePTFE tube toward the free end of the ePTFE tube. House fails to disclose any radial expansion of the ePTFE tube during this step. The Examiner appears to assert the House is stating that its mandrel is longitudinally compressed. House, however, clearly does not disclose the assertion by the examiner.

Moreover, at column 6, lines 47-53, House fails to disclose that when its ePTFE tube is compressed longitudinally that the ePTFE tube is also radially expanded. Clearly, House describes that its stainless steel mandrels have a 10 mm outside diameter. House clearly fails to disclose that its stainless steel mandrels may be expanded radially when the ePTFE tube is longitudinally compressed.

The Examiner is clearly reading more into the cited reference than is actually disclosed. As House is silent as to, *inter alia*, “radially expanding and longitudinal foreshortening” a longitudinally stretched ePTFE tube, the Examiner must then properly apply an inherency argument to the missing descriptive matter of House. To establish inherency, the extrinsic

evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *Crown Oper. Int'l Inc. v. Solutia Inc.*, 289 F.3d 1367, 62 U.S.P.Q.2d 1917 (Fed. Cir. 2002). Further, inherency may not be established by probabilities or possibilities, and the mere fact that a certain thing may result from a given set of circumstances is not sufficient for a *prima facie* case of anticipation. *Scaltech Inc. v. Retec/Tetra L.L.C.*, 153 F.3d 1193, 51 U.S.P.Q.2d 1055 (Fed. Cir. 1999). Occasional results are not inherent. *Mehl/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1365, 52 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 1999).

Clearly, the assertion by the examiner does not meet the standard for establishing a *prima facie* case of anticipation.

Furthermore, the Examiner asserts that House's longitudinal compression must include radial expansion to avoid wrinkles in the ePTFE tube. For alleged support of such an assertion, the Examiner points the Applicant to column 3, lines 24-29 of House. Nevertheless, House in the same paragraph states that House's longitudinal compression may result in wrinkles. (House, column 3, lines 34-36). Clearly, the "wrinkle" argument by the examiner is strong and does not meet the legal threshold for reading the missing elements of House based on inherency principals.

Therefore House fails to disclose the "radially expanding and longitudinally foreshortening" of ePTFE as set forth in independent claims 1m 16 and 18.

Further, the processing steps of House results in tits fibrils having a bent or wavy appearance. (House, column 4, lines 22-23, Fig. 2). Such a bending of the fibrils is in direct contrast to the present invention. For example, in amended claim 1 the reoriented fibrils have the same fibril length, but are hingeably rotated resulting from an increase in the circumferential length of the nodes. As clearly depicted in Fig. 3, the nodes of House are not

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lengthened in the circumferential direction. Accordingly, the fibrils of house are necessarily bent to decrease the overall length between the nodes. Moreover, the bending or shortening of the fibrils of House is also in direct contrast to the limitations of claim 18 which requires, *inter alia*, greater internodal distances.

Therefore, House clearly fails to disclose the present invention as defined by independent claims 1, 16 and 18. Reconsideration and withdrawal of the Section 102 rejections over House are respectfully requested.

REMARKS:

Therefore, Applicants respectfully submit that independent claims 1, 16 and 18, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,

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